IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FAMILY COURT APPEAL NO. 14 OF 2002

Sunil Gokul Pawar, age 38 years,]
Occ: Service, R/o. 112, M.G1 Road,]
Shrikant Tailors, Near Madhavji]
Chiwadawala, Nasik.] .. Appellant

Vs

Anita Sunil Pawar, age 32 years,]
Occ: Service, R/o. Karve Stree Shikshan]
Sanstha, Mahilashram Vasatigruha,]
Karve Nagar, Pune - 52.] .. Respondent

ALONGWITH

CIVIL APPLICATION M. NO. 10 OF 2005

Smt. Anita Sunil Pawar, age 32 years,]
presently residing at C/o. Shri C.P.]
Hendre, Flat No.3, Shreevats Society,]
Raghav Nagar, Dhankavadi, Near Bharti]
Hospital, Pune - 411 043.] .. Applicant
(Respondent)

Vs

Sunil Gokul Pawar, age 38 years,]
R/o. 112, M.G. Road, Shrikant Tailors,]
Near Madhavji Chivdawala.] .. Opponent
(Appellant)

Ms. Smita Mane i/b P.B. Shah & Co. for the appellant in F.C.A. No.14 of 2002 & for the opponent in C.A.M. No.10 of 2005.

Mr. A.V. Datar for the respondent in F.C.A. No.14 of 2002 and for the applicant in C.A.M. No.10 of 2005.

CORAM: R.M.S. KHANDEPARKAR &
ANOOP V. MOHTA, JJ.

DATED: 6TH JUNE, 2005

ORAL JUDGMENT: [Per Anoop V. Mohta, J.]

1. The appellant-husband has challenged the common judgment and order dated 14th June, 2001, passed by the learned Judge, Family Court, Pune, in P.A. No.160 of 2000, whereby, the Petition of the appellant for the divorce was dismissed. Petition No.1525 of 1998 filed by the respondent-wife for the maintenance has been partly allowed, whereby the appellant has been directed to pay maintenance to their children at the rate of Rs.200/- per month to each child, from the date of the order. However, the claim of the respondent-wife for the maintenance was rejected. There is no appeal by the respondent-wife, except an application for enhancement of the maintenance for the children in the present Appeal. The Appeal is mainly against the order of dismissal of the divorce Petition.

2. The appellant married the respondent at Satara as per Hindu rites on 31st January, 1982. They have four children out of the said wedlock. After sometime, there were regular quarrels between the parties. There were allegations and counter allegations made by the parties against each other. The appellant alleged that

respondent-wife insisted to reside separately and permanently at Satara. He used to bring her back after every quarrel as she used to leave the house frequently. As alleged, the respondent-wife objected to bring home the idol of Ganapati and thereby hurt his religious feelings and caused mental harassment. As alleged, the respondent-wife started reading Bible and developing friendship with the Christians. She used to visit the Church and read the Bible regularly. Sometime in the year 1997, the respondent-wife left the house and the children and went with the ornaments and some articles. The children were with the appellant-husband.

3. The respondent-wife denied the allegations and on the contrary alleged that appellant-husband drove her out of home finally in the year 1999 and was not allowing her to cohabit and to live in the house thereafter. Being alcoholic and drug addict, he used to beat her, harass her, and not allowed her to meet the children. Respondent has asserted that she being Hindu, believed in Hindu religion only. In this background, by an Application No.1525 of 1998, filed in the Family Court at Pune, the respondent-wife prayed for the maintenance for herself and for the children. The said application was contested by the appellant-husband. The appellant-husband thereafter, by an application

P.A.No.160 of 2000, filed the Divorce Petition in the Family Court at Pune, on the grounds of conversion of religion, from Hindu to Christian, cruelty and desertion. The respondent-wife, by the written statement dated 10th June, 2000, resisted the said Petition and prayed for a decision on her maintenance application and also prayed for the custody of the children.

4. The common evidence was led by the parties. The respondent-wife, apart from herself, led evidence of two witnesses and the appellant-husband examined himself and led evidence of one witness (father). The parties were unable to settle the dispute, even through the Counsellor.

5. The learned Judge, after considering the testimonies of the witnesses and the pleadings on the record, by the impugned judgment and order, rejected the Divorce Petition of the appellant-husband and partly allowed the maintenance application only in respect of the children and rejected the same in respect of the respondent-wife.

6. The learned Advocate Ms. Smita Mane appeared for the appellant, contended that the decree for divorce

on the ground of cruelty and conversion ought to have been granted in the present case. The respondent's conduct of objecting to bring home the Ganpati idol and its worship during the festival, hurt the religious feelings and caused mental harassment to the appellant-husband. She further contended that inspite of the appellant's objection, the respondent-wife used to go to Church and read the Bible and had started developing friendship with the Christians and, therefore, this amounts to cruelty. She has relied upon the decision of the Apex Court in the case of **G.V.N. Kameswara Rao Vs. G. Jabilli** [reported in (2002) 2 S.C.C, 296] to support her submission on the ground of "Cruelty - mental cruelty" as contemplated under Section 13(1)(i-a) of the Hindu Marriage Act, 1955 (for short "H.M.Act"). The learned Advocate Mr. A.V. Datar appearing for the respondent-wife resisted the said contentions and supported the judgment and submitted to enhance the amount of maintenance through Civil Application M No.10 of 2005 in First Appeal No.14 of 2002 filed by the appellant-husband. There is no separate Appeal filed by the respondent-wife to challenge the rejection of her maintenance prayer and/or for enhancement of the maintenance as already awarded in favour of the children.

7. We have gone through the respective pleadings and the evidence led by the parties. We are of the view that the appellant-husband failed to bring sufficient material and evidence on the record to show that the respondent-wife has converted herself as a Christian. There is nothing on the record to show and/or pointed by the learned Advocate appearing for the appellant to justify the ground of conversion for the divorce as contemplated under Section 13(1)(ii) of the H.M.Act. The respondent-wife, in fact, in her Written Statement specifically denied the allegations of the conversion. The appellant-husband failed to prove or bring any evidence or material on the record in support of his vague allegation of conversion and cruelty and desertion, except bare words and statements. No third person, other than father was examined to support such allegations. We are, therefore, of the view that on such vague pleadings and weak evidence, no divorce can be granted based on the allegation of conversion. There is nothing on the record to support the case of the appellant that the respondent converted herself into a Christian and ceases to be a Hindu. Merely because as alleged, the respondent used to visit the Church and read the Bible or developed friendship with the Christians, that itself is no ground which falls within the ambit of Section 13(1)(ii) of the H.M.Act. The

requirement of the law is a factual conversion of a Hindu into any other religion. In the present case, in absence of any document and evidence to support the allegation, it is difficult to accept the contention. According to us, the appellant failed to substantiate his case to get the divorce on the foundation of Section 13(1)(ii) of the H.M.Act. In the present case, on merit itself, there is no such case of conversion made out. In this background, it is difficult to accept the contention of the appellant that any cruelty was caused by the respondent-wife on this count. The learned Judge, therefore, rightly observed that no case has been made out by the appellant-husband that the respondent-wife caused him mental cruelty by going to the Church or by reading the Bible or developing friendship with Christians.

8. The Apex Court’s decision in **G.V.N. Rameshwar Rao** (supra) is distinguishable on facts itself. The principle of cruelty or mental cruelty, as elaborated by the Apex Court is well settled and need no discussion. In the facts of the present case, on merit itself, as there is no case made out of cruelty, by the appellant-husband, the Apex Court decision nowhere supports the submission or contention as raised and submitted by the learned Advocate appearing for the

appellant.

9. There is no material at all on the record to justify the allegations that the respondent-wife prevented or obstructed to bring the idol of Lord Ganpati in the house, except bare words and allegations. The learned Judge, therefore, has rightly observed that no case made out by the appellant-husband that the respondent-wife was hurting his religious feelings by objecting to bring home the Ganpati idol.

10. On the contrary, there are allegations against the appellant-husband, supported by witnesses, about his alcoholism and drug addiction and regular beating and torture and quarrels with the respondent-wife. Appellant-husband drove her out of the house and not allowed her to meet the children and even to cohabit. Therefore, respondent has no choice, but to pray for maintenance and to earn her livelihood. She is living away from the matrimonial house in this background.

11. The application for maintenance was filed by the respondent-wife in the year 1998 and in the year 2000, the appellant-husband filed the application for

divorce on above referred grounds, practically after more than four years of alleged desertion, without supportive evidence. In this background, we see no reason to interfere with the findings recorded by the Court below. We also confirm the order of rejection of Divorce Petition filed by the appellant-husband.

12. As noted, there was no separate Appeal filed by the respondent-wife for enhancement of the maintenance of the children and/or against rejection of her application for maintenance. The appellant-husband has preferred the present Appeal and challenged the order of dismissal of his application for divorce. In such circumstances, and in the facts and circumstances of the present case, we are not inclined to grant any enhancement of the maintenance to the children as prayed for by the respondent-wife in the present Appeal filed by the appellant-husband. The respondent-wife has other remedies for claiming the enhancement, if so advised.

13. The learned Advocate appearing for the respondent was also unable to support his submission about the provisions to claim enhancement of maintenance without challenging the same by the Appeal, but claiming the same by the application for enhancement in the

Appeal filed by the appellant.

14. The parties were unable to come to any settlement inspite of persuasion and opportunity granted by this Court and as reflected in the order dated 28th February, 2002.

15. We see there is no ground made out to interfere with the reasoning given by the learned Judge. The impugned judgment and order is, therefore, confirmed.

16. For the above reasons, therefore, Appeal No.14 of 2002 and Civil Application M. No.10 of 2005 are dismissed. No order as to costs.

[R.M.S. KHANDEPARKAR, J.]

[ANOOP V. MOHTA, J.]

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